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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,034	02/20/2004	Jean Servaux	88265-68601	1732

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WINSTON & STRAWN LLP  
PATENT DEPARTMENT  
1700 K STREET, N.W.  
WASHINGTON, DC 20006

EXAMINER
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WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/19/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/784,034

Applicant(s)

SERVAUX ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 10/448,340.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/20/04</u> . | 6) <input type="checkbox"/> Other: ____  |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,14, and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hafele (3,857,506) or Grimes (3,632,004) or Marshall (2,649,392) or Bradford (3,054,679) or Blackwell (1,753,736) or Knowlton (720,819) or Koch et al (2,138,241).

In regard to claim 1, all of the references relied on above teach a container having a neck and a body with the neck having a rim and a membrane sealed around the periphery of the rim and wherein the rim comprises at least one zone to allow sufficient grasp of the membrane for removal of the membrane from the rim during opening of the packaging. In regard to claim 2, all of the references relied on above provide a membrane having a uniform periphery and wherein at least one zone of the rim has a periphery that is non-uniform and is within the periphery of the membrane. In regard to claim 3, all of the references teach one or more of the recited geometries for the membrane. In regard to claim 14, all of the references disclose one or more of the recited species of containers. In regard to claim 17, all of the references disclose one or more of the recited species of membrane material of construction. In regard to claim 18, which recites that the various materials act as an oxygen barrier, any material of construction that is not a mesh, or perforated or fibrous will inherently restrict air/oxygen to some degree. In regard to claim 19, all of the references disclose one or more

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species of sealing. In regard to claim 20, all of the references disclose the packaging containing food.

Claims 4,5,13,15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hafele ('506) or Grimes ('004).

Both references teach a zone that has a flat surface (i.e., #25 and #28), respectively. Note that the word flat can mean a horizontal surface without a slope, tilt or curvature, but it also means having a smooth, even, level surface, and the claims are not limiting to one definition or the other. The regions of both Hafele and Grimes are smooth with no unevenness. In regard to claim 5, both Hafele and Grimes disclose the rim includes at least one zone of reduced thickness over a distance, which allows protrusion of at least a portion of the membrane to provide the exposed area for grasping. In regard to claims 13,15 and 16, both Hafele and Grimes teach substantially circular membranes, a closure means with screw means to secure the closure means to threads on the neck and a jar made of plastic.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grimes in view of Hafele or vice versa, i.e., Hafele in view of Grimes both further in view of Marshall ('392), and Bradford ('679), and Blackwell ('736), and Knowlton ('819), and Koch et al ('241), Coup (1,654,239), and Ushkow (3,078,986).

Grimes as further evidenced by Hafele, or Hafele as further evidenced by Grimes, discloses it was notoriously conventional to provide a rim with a zone that allows one to grasp a membrane sealed around the periphery of the rim for removal of the membrane from the zone. Marshall, Bradford, Blackwell, Knowlton, Koch et al, Coup, and Ushkow are relied on as further evidence that it was notoriously conventional to provide various closure/container opening assemblies with various types or species or designs of non-uniform rim peripheries such that the closure, which is uniform, extends beyond the non-uniformity and enables one to grasp the closure and remove it from the rim to access the container. Claims 6,8,9,10, and 11 recite various dimensions and angles all directed to enable one to grasp the closure. Since the preponderance of the evidence, as represented by the art taken as a whole, teaches to provide the uniform closure and non-uniform rim to allow for sufficient overhang of the closure for grasping, the particular dimensions of the conventional structural expedients is seen to have been an obvious result effective variable, obviously and routinely determinable. In regard to claim 7, which recites a niche for the finger or thumb, both Grimes and Hafele disclose niches that are considered to correspond to the ergonomic of a finger or thumb. In any case, Blackwell discloses it is notoriously old in the art to provide a niche in the rim of a container to allow access to raise a cover, which niche is curved like a finger, and to therefore modify the combination and provide the shape of the niche for its art recognized and applicants intended function is therefore seen to have been obvious. In regard to claim 12, which recites the rim has diametrically opposed zones of lesser thickness, once it was known to provide one zone for its art

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recognized and applicants intended function, to provide a second zone for the same purpose would have been an obvious matter of choice and/or design. In any case, Marshall teaches it was well established in the art to provide two zones of reduced thickness on the rim of a container, diametrically opposed to each other and with the uniform closure extending beyond both reduced area zones. To modify the combination and provide both zones would therefore have been obvious.

The remainder of the references cited on the PTO892 form are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
12/14/06